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IN THE SUPREME COURT OF THE UNITED STATES
October Term, 1982
No.

John F. Stevenson, Charles F. Sloan, and
John E. Cooper, Petitioners

v.

General Electric Company
International Association of Machinists
Lodge 912
International Association of Machinist
Local 647 of the United Auto Aero Space
And Agricultural Implement Workers
of America
and
United Auto Aero Space and Agricultural
Implement Workers of America

PETITION FOR WRIT OF CERTIORARI
TO UNITED STATES SUPREME COURT

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IN THE SUPREME COURT OF THE UNITED STATES
October Term, 1982

No. _____

JOHN F. STEVENSON, CHARLES F. SLOAN, and
JOHN E. COOPER, Petitioners

-vs-

GENERAL ELECTRIC COMPANY
INTERNATIONAL ASSOCIATION OF MACHINISTS
LODGE 912
INTERNATIONAL ASSOCIATION OF MACHINISTS
LOCAL 647 OF THE UNITED AUTO AERO SPACE
AND AGRICULTURAL IMPLEMENT WORKERS
OF AMERICA
and
UNITED AUTO AERO SPACE AND AGRICULTURAL
IMPLEMENT WORKERS OF AMERICA

PETITION FOR A WRIT OF CERTIORARI TO SUPREME COURT OF THE UNITED STATES

To the Honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States:

John Stevenson, Charles F. Sloan and John E. Cooper, the Petitioners herein, pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Sixth Circuit entered in the above-entitled case on August 16, 1982.

QUESTIONS PRESENTED FOR REVIEW

1.) Whether evidence of discrimination by company and union officials against black employees may be introduced in a class action suit under 42 U.S.C.A. 1981 and 42 U.S.C.A. 2000(e), et seq. to prove that the Defendant Company and Unions intentionally maintained a policy of not permitting black employees to join one of the unions when the evidence is beyond the statute of limitations for introduction of discriminatory acts under both 42 U.S.C.A. 1981 and 42 U.S.C.A. 2000(e).

2.) Whether Petitioners were denied a fair trial when they were: (a) denied the right to discover, prior to trial and during trial, the facts and figures of the affirmative action plan of the respondent General Electric,; (b) when the respondent General Electric was permitted to amend its exhibit and witness list thirteen (13) days before submission of its direct evidence; and (c) when the Court refused to allow Plaintiff to introduce Exhibit 341 to evidence that the articulation made by the Defendant U.A.W. Local 647 and the U.A.W. was pretextual.

3.) Whether in a class action based on race discrimination alleging an intentional maintenance of a seniority system which is not "bona fide" the Petitioner has the burden to prove that the seniority system is not bona fide after statistical evidence establishes a prima facia case.

4.) Whether the charge of retaliation encompasses actions which are only discriminatory or whether they encompass actions by employers which have a detrimental effect to the employee even though they may not be of a discriminatory nature.

5.) Whether an Appellate Court should attempt to resolve factual issues on its own when under Rule 52 of the Federal Rules of Civil Procedure the District Judge makes no findings of fact as to individual discriminatory claims of the Petitioners.

LIST OF PARTIES

Petitioners:

John R. Stevenson
Charles F. Sloan
John E. Cooper

Respondents:

General Electric Company
International Association of Machinists
Lodge 912
International Association of Machinists
Local 647 of the United Auto Aero Space
and Agricultural Implement Workers of America
United Auto Aero Space and Agricultural
Implement Workers of America

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JURISDICTION

The judgment of the Court of Appeals for the Sixth Circuit (App. 1-20) was entered on August 16, 1982. Jurisdiction of the Supreme Court is invoked under U.S. Sup. Ct. Rules 19, 20 and 21, and pursuant to 28 U.S.C.A. §2101(c).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

42 U.S.C. §2000e-3(a)

42 U.S.C. §2000e-2(a)(1)(2)

42 U.S.C. §2000e-2c(1)(2)(3)

42 U.S.C. §2000e-2h

42 U.S.C. §2000e-2j

Amendment V to the Constitution of the United States of America

Fed. Rules Civ. Proc., Rule 34, 28 U.S.C.A.

Fed. Rules Civ. Proc., Rule 52, 28 U.S.C.A.

All Statutes, Ordinances and Rules to be designated fully in the Appendix attached hereto.

CONSTITUTIONAL PROVISIONS and STATUTES

Civil Rights Act 1964, 42 U.S.C.A. §2000e, et seq. 1, 18

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TABLE OF AUTHORITIES

1. Albemarle Paper Company v. Moody, 422 U.S. 405(1975) 12

2. Bryant v. California Brewers Association, 585 F.2d, 421 (CA9, 1978) 21

3. Burns v. Thiokol Chemical Corporation, 483 F.2d, 300 (CA5, 1973) 18

4. Connecticut v. Teal, 73 L.Ed. 2d 130 (1982) 11

5. Donofre v. Transportation Ins. Rating Bureau, 432 F.2d 43 (CA7, 1976) 20

6. Dothard v. Rawlinson, 433 U.S. 32(1977). . . . 12

7. Herbert v. Monsanto Company, 682 F.2d,1111 (CA 5, 1982) 14

8. Hyland v. Kenner Products Co., 13 F.E.P. Cases 1309 (S.D. Ohio, 1976) 20

9. James v. Stockham Valves & Figging Company, 559 F.2d 310 (CA5, 1977) 14

10. Kelly v. Everglades Drainage Dist., 319 U.S. 415 (1943). 20

11. McDonnel Douglas Corporation v. Green, 411 U.S. 792 (1973) 17

12. Petteway v.American Cast Iron Co., 411 F.2d 998 (CA 5, 1969) 20

13. Pullman Standard v. Swint, 102 Sup. Ct., 1781 (1982). 3, 15

14. Rick v. Martin Marietta Corp., 522 F.2d 333 (CA 10, 1975) 18

15. Russo v. Central School Dist. No. I, Towns of Rush, et al., Monroe County, State of New York, 469 F.2d 623 (CA 2, 1972) . . . 20

16. Teamsters v. United States, 431 U.S. 324 (1977) 15

17. Wattleton v. Boilermakers, 686 F.2d 586 (C.A. 7, 1982) 14

STATEMENT OF THE CASE

This is a class action brought by the Petitioners against all of the Defendants alleging race discrimination in the hiring and promoting of black employees; in the processing of grievances for black employees; in the conspiring of the unions and the company against black employees by intentionally discriminating against black employees in the maintaining of separate unions; and the actions of the major unions and the company to limit the ability of black employees to redress their rights under Civil Rights Acts of 1964 (42 U.S.C.A. 2000e, et seq.) and 1888 (42 U.S.A.A.1981). In 1948 when General Electric started the Evendale Plant near Cincinnati, Ohio, two unions were formed at the plant, namely, the International Association of Machinists, Local 912 and United Auto Workers, Local 647. At all times during this litigation, the U.A.W. Local 647 Union, which is the production workers, was between 18 and 26 percent black, while the I.A.M. Local 912, the machinists workers, was between 1 and 3 percent black. All union contracts between General Electric and the two unions had a provision which excluded civil rights

grievances from being arbitrated at the request of either party. Civil rights grievances prior to 1976 could only be arbitrated by mutual consent of the parties. No civil rights discrimination grievances based on race have ever been arbitrated by either the U.A.W. Local 647 or the I.A.M. Local 912 at the Evendale Plant at the time of the filing of the Complaint in 1977.

Testimony evidenced that IAM & UAW Union officials failed to file civil rights grievances for blacks and did not negotiate at any time the right to have civil rights grievances arbitrated at the Union's request. The International UAW was appealed to for help by Petitioner, John Stevenson, to no avail. The UAW Local 647, the only Union which had a sufficient number of blacks did not even allow the issue of race discrimination to be discussed at Union meetings. (App. 35)

The upgrading system at General Electric requires no posting of jobs. Any employee may apply for a promotion at any time. Both union officials and foremen told their friends when the new jobs were available. This practice, along with the failure of General Electric to

employ blacks in positions where blacks could gain experience prior to 1969, caused blacks to receive promotions to new job openings one and a half years after Caucasians. Prelimitation evidence such as the Family Tree Doctrine (individuals could only be promoted to jobs in their own family tree), and upgrading systems which required no applications, were not permitted by the Court.

The District Court, after having found a prima facie case against Local Union 647, the UAW International, and General Electric (the IAM Local 912 was dismissed except for award purposes at the end of Plaintiffs' case), found that both Defendants had articulated a defense which was not proven pretextual. The Court of Appeals of the Sixth Circuit affirmed. The Sixth Circuit committed a clear breach of its duty in lifht of Swint v. Pullman, 102 Sup. Ct. 1781 (1982). The Sixth Circuit found that the District Court consistently held that it would admit prelimitations evidence for the purpose of proving that the Defendants' seniority system was not bona fide. (App. 9, 10)

Portions of the transcript attached to the Appendix clearly evidence that the appellants were not permitted

to introduce any evidence beyond the genesis of the seniority system to prove the seniority system was not bonafide. (App. 63-69) The Court of Appeals further states (App. 17):

> "there was also no evidence that the seniority system was maintained or negotiated for with discriminatory intent."

No evidence that the seniority system (the loss of seniority from one union to the other) was maintained with discriminatory intent was permitted by the District Court.

EVIDENCE

The pattern of segregated unions has persisted since the organization of the unions in 1948. Much of the evidence excluded by the District Judge but proferred or not proferred because of the rulings of the Judge would have shown evidence that blacks were not accepted in the I.A.M. Local 912 union due to their race. (App. 76) Evidence that five blacks had transferred from the U.A.W. Local 647 to the I.A.M. Local 912 between 1969 and 1977 which was 5 percent of the blacks who applied was the only evidence of transfers to the I.A.M. unit from the U.A.W. submitted

by any of the Respondents. Petitioners submitted evidence based on seniority lists that between 1969 and 1979, 15 blacks and 320 whites were either hired into or transferred to the IAM unit. (App. 62, 63) The Court found that based on that evidence there was no discrimination. The evidence was clear that U.A.W. and I.A.M. employees had the same right to apply for positions in either unit and they would receive said upgrades solely based on their experience.

When experience was the same the seniority in the unit applied. Employees would be automatically excluded from a job if they did not meet written standards for the jobs in both local unions. The standards were codified by General Electric through documents called Minimum Criteria Experience. No evidence was introduced by any party to prove that the Minimum Criteria Experience was job related. (App. 37) Between 1969 and 1977 white employees on the average received upgrades seven months faster than black employees in the U.A.W. unit. (App.79) The transfer of an employee from the I.A.M. to the U.A.W. or visa versa caused a loss of plant seniority as far as upgrades and downgrades but an employee did not lose his seniority with regard to

pension or other plant wide benefits. The Court would not permit evidence of transfer of black employees to the I.A.M. unit or attempts of new black employees to work in the I.A.M. unit prior to 1969 in order to show a discriminatory pattern by the company and the unions regardless of the seniority provision. The Court of Appeals affirmed the District Court's ruling excluding pre-1969 evidence.

DENIAL OF DISCOVERY

Evidence of the facts and figures of the affirmative action plan was not permitted by the Court. Even when the Petitioners attempted to profer said documents by subpoenaing them to make them part of their record, the Court sustained the objection to said proffer. (See App. 77) During the trial, General Electric had entered into a conciliation agreement with the Equal Employment Opportunity Commission concerning race discrimination nationally. The plant at Evendale was part and parcel of said settlement. The facts and figures of the affirmative action plan if permitted to be reviewed by this Court, pursuant to Rule 34 of the Federal Rules of Civil Procedure, Fed. Rules Civ. Proc. Rule 34, 28 U.S.C.A.

(App. 53-54), would show a clear discriminatory pattern. While during discovery, petitioners were permitted to review numerous records of employees and submit them to a statician for review, this review only took place after the Court denied the affirmative action statistics.

FAIR TRIAL

In the Pre-Trial Order, Petitioner and Respondents had submitted all of the exhibits and listed all the witnesses which they planned to introduce and have testify at trial. At the conclusion of Petitioner's case, the District Court adjourned the trial for a period of nine months.

Thirteen days prior to the Defendant General Electric's having to submit their testimony, Defendant General Electric filed a motion to amend their Pre-Trial Order to include 13 new exhibits and several new witnesses which Plaintiff had not seen or had an opportunity to discover prior to the trial. The Petitioners objected strenuously to the introduction of this new material by filing a memorandum against the motion to the introduction of the new material. The District Court failed to rule on said motion until after the trial resumed, and then

permitted the new witnesses and the new exhibits. (App. 78) The respondent General Electric had nine months to prepare its defense to Plaintiff's evidence. To serve the Petitioners with the new exhibits and a list of new witnesses thirteen (13) days before they had to put on their direct evidence was not only discourteous but prejudicial to the Petitioners. The Court in permitting the evidence and not ruling on the Petitioner's Motion to Quash or exclude the evidence prior to trial resuming clearly denied the Petitioners the right to a fair trial.

The District Court found a prima facia case of discrimination against the U.A.W. and Local U.A.W. 647 in finding that the Union failed to process grievances filed by blacks alleging racial discrimination, or upgrade. Respondents Local 647 and the U.A.W. in its direct evidence produced numerous witnesses who testified that they treated black employee grievances in the same manner as white employee grievances. The U.A.W. and Local 647 respondents also attempted to introduce a statistical analysis which showed that black employee grievances were filed and processed in the same manner as white employee grievances. The statistical analysis

was labeled Exhibit 341. Exhibit 341 was excluded by the Court because Petitioners proved that the assembler of the statistics did not determine whether the grievant was black or white and, therefore, the analysis had no probative value whatsoever. However, Exhibit 342 included numerical statistics proving that the average grievance alleging any violation took approximately six months in order to reach the third step. This figure did not depend on whether the employee was black or white or the subject matter of the grievance.

In its rebuttal, Petitioner attempted to introduce Exhibit 342 in order to present evidence to the District Court that the statistics proved that the average time to process all grievances to a resolution was six months. Petitioner in rebuttal and in the direct evidence had submitted numerous exhibits (App. 56-60) to show that civil rights and upgrade grievances filed by blacks took over a year and a half to process to final resolution. The District Court would not permit Petitioner to introduce the statistical report which clearly proved discrimination by General Electric and the UAW Local 647 in the processing of civil rights grievances. In fact, the District Court permitted the UAW to withdraw

said exhibit in violation of the pretrial order permitting any party to use the other exhibits. (App. 71-75) Petitioners argued to the Court that the introduction of Exhibit 342 was clearly to prove that the evidence submitted by the U.A.W. and the U.A.W. Local 647 was pretextual. The Sixth Circuit Court of Appeals erred when they ruled nothing could be gained by allowing either party to introduce U.A.W. Exhibit 342. (App. 10)

The District Court held that the Petitioner had the burden to prove that General Electric's seniority system was "bona fide". (App. 67) The Sixth Circuit adopted this ruling by not specifically addressing the issue raised on appeal.

INDIVIDUAL ACTIONS

Not only did the Court of Appeals err in adopting the findings of the District Court concerning the class action but also clearly erred in the individual actions brought by the Petitioners. The Court of Appeals in its Opinion and Order never addresses whatsoever the issue of retaliation. We must assume then that it adopted the complete findings of the District Court.

In the District Court, the Honorable Judge Rubin never addresses the issue of retaliation and only devotes nine lines to all of the individual claims. (App. 43) Under Rule 52 of the Federal Rules of Civil Procedure, this finding is clearly erroneous and must be remanded to the District Court in order for the Court to make factual findings which the Petitioners should have a right to appeal.

MINIMUM CRITERIA

The statistical data relied upon by the Court of Appeals is clearly faulty in light of Connecticut vs. Teal, 73 L.Ed. 2d 130 (1982). Findings of the Court of Appeals that approximately five percent of the employees seeking transfer into the I.A.M. were black and that five percent of the applicants were black, is completely inconsistent with the findings in Teal, supra., which makes it clear that the obligation of Title 7 is to provide an equal opportunity for each applicant regardless of the race. Seniority lists admitted between 1969 and 1977 and those seniority lists excluded clearly showed an adverse impact of upgrades into the I.A.M. unit. The Court of Appeals decision (App. 19) while quoting

Teal concerning the "bottom line" adopts the findings of the District Court which are contrary to law. In finding that there was no showing of disparate impact, the Court of Appeals has discarded the findings of the number of blacks in the I.A.M. and that of the U.A.W. The Sixth Circuit in its opinion, confirms the District Court's finding that no evidence that the minimum criteria had a disparate impact on black employees or that the criteria was not job related was introduced at the trial level. (App. 18) This is not the Petitioners burden. In Dothard vs. Rawlinson, 433 U.S. 321 (1977) and in Albemarle Paper Company vs. Moody, 422 U.S. 405, (1975)at 1190, the burden shifted to the employer to show that the minimum criteria experience was job related.

ARGUMENT

Prelimitation Evidence

The crux of this Writ of Certiorari manifests itself in the failure of the Court of Appeals to understand the promotional and seniority system at General Electric and its discriminatory effect and impact. Evidence which should have been admitted at the District Court level to show the practices and policies which led

to the disparate impact were not permitted. The District Court's evidentiary rulings prevented evidence to be introduced of blacks being hired in menial positions prior to 1969 where they could not receive training on machines in order to qualify for I.A.M. positions. This clearly prejudiced Petitioners. Assuming the evidence had been permitted (the blacks were "hired on the broom" and white with less education and no more experience were hired on machines) the adoption and use of the Minimum Criteria experience in 1966 and thereafter by the company for both positions in the I.A.M. and the U.A.W. unit had a disparate impact against black employees. The findings of the Court of Appeals "the District Court consistently held that it would admit prelimitations evidence for the purpose of proving that Defendant's seniority system was not "bona fide" is not factual. (App. 9) The appendix attached hereto, pages 63 through 69 clearly and without a doubt reveals that the District Court would not allow any evidence of the maintenance of the unions for an illegal purpose. The District Court clearly limited any prelimitation evidence to the genesis of the system. Furthermore, the Court of Appeals

finding that individual discrimination which occurred prior to the applicable statute of limitations was correctly excluded by the District Court is in conflict with numerous other Court of Appeals decisions where individual discriminatory actions to show intention to discriminate even though prior to the statute of limitations was held admissable. (App. 9) Petitioner attempted to introduce numerous black employees who were to testify to the practice and pattern of General Electric and the I.A.M. to exclude blacks from the I.A.M. unit. This evidence was excluded. In James vs. Stockham Valves and Figging Company, 559 F. 2d 310 at 352 (C.A. 5, 1977), Herbert vs. Monsanto Company, 682 F. 2d 1111 (C.A. 5 1982), and also Wattleton vs. Boilermakers, 686 F. 2d 586 (C.A. 7, 1982), the Courts permitted both individual and general practices of the unions and the company of discrimination against blacks prior to the statute of limitations. When there is a conflict in circuits under U.S. Supreme Court Rule 17(a), 28 U.S.C.A., this Court should grant certiorari.

Evidence before this Court from the transcript (App. 63-69) clearly evidences that not only were individual acts of discrimination excluded but when on cross

examination, General Electric's chief operating labor officer was asked the question, "What was the upgrading procedure between 1948 and 1956," (App. 68) and, "Wasn't it true that all black employees or 98% of them were hired in janitorial positions in 1948," both questions were objected to by the Defendants and the objections were sustained based on the issue of prelimitation evidence.

While the Court agreed to permit evidence as to the creation of the two unions in terms of discriminatory intent, the Court makes it clear that it will not permit any evidence whatsoever on the maintenance of the system of either upgrading or seniority. This clear ruling conflicts with not only Court of Appeals decisions but the decisions of this Court in Teamsters vs. The United States, 431 U.S. 324 at 348 through 355 (1977) and Pullman-Standard vs. Swint, 102 Sup. Ct. 1781 (1982) at 1986 where this Court adopts the fourth test initiated by James, supra, the fourth test being "whether the system was negotiated and has been maintained free from any illegal purpose." Wherefore, not only is the Court of Appeals of the Sixth Circuit in conflict with other circuits, but under U.S. Supreme Court Rule 17(c), 28

U.S.C.A., the Court of Appeals decision in finding the District Court did not abuse its discretion, has decided a federal question in conflict with applicable decisions of this Court.

FAIR TRIAL

The hearthstone of any trial is that it shall be fair to all parties involved. The failure of Judge Rubin, to rule on Petitioner's Motion to Quash the new exhibits and new witnesses which General Electric provided to Petitioners thirteen (13) days before they had to put on their direct evidence clearly denied Petitioners a fair trial. Petitioners could in no way discover all the material in the new exhibits prior to said trial. The time and expense of pursuing new depositions and new discovery was impossible. We must assume that the Court of Appeals in the Sixth Circuit found that Petitioners had not been prejudiced by the actions of the District Court because they did not even comment on this issue which was raised on appeal. Actions of the District Court so departed from the accepted and usual course of judicial proceedings and the Court of Appeals sanction/such a departure, must cause this Court to

exercise its power of supervision. U.S. Sup. Ct. Rule 17(a), 28 U.S.C.A.

EXHIBIT 342

Not only did the above evidentiary ruling of the Court prejudice the Petitioners, but the refusal to allow Petitioners to introduce U.A.W. Exhibit 342 to prove officials of the UAW Local 647 testimony was pretextual clearly violated McDonnel Douglas Corporation v. Green, 411 U.S. 792 (1973) and numerous cases decided by this Court which permits Petitioners on rebuttal to show that the evidence articulated by the Union was nothing more than a falsehood. The Court of Appeals of the Sixth Circuit (App. 10) in finding that "nothing could be gained by allowing either party to introduce evidence (Exhibit 342) with such a critical flaw did not understand the issue raised on appeal." The testimony of Samuel Allmond, a U.A.W. committeeman (submitted in Petitioners' case in chief), established that the average time for a grievance to reach the third step was five to six months. Petitioners also introduced evidence that civil rights grievances took one and one half years to process to the third step.

This fact alone established a prima facia case of discrimination. The provision in both union contracts between 1969 and 1976 which did not permit the arbitration of civil rights except by mutual consent of company and union, while neutral on its face had a discriminatory impact against black employees and was in clear violation of the Civil Rights Act of 1964, 42 U.S.C.A. 2000e(3).

DISCOVERY

The Sixth Circuit Ruling not permitting discovery of the facts and figures of General Electric's affirmative action plan conflicts directly with the Fifth Circuit in Burns v. Thiokol Chemical Corporation, 483 F.2d 300 (C.A. 5, 1973), Rick v Martin Marietta Corp., 522 F.2d 333 (C.A. 10, 1975),and numerous district court decisions. The law is well established that discovery of the facts and figures is essential to a civil rights class action.

INDIVIDUAL ACTIONS

a.) Retaliation

Petitioners John Cooper and John Stevenson,alleged

in their individual cases retaliation by U.A.W. and General Electric. The Court held that under the charge of retaliation, the evidence is confined to whether or not an individual is treated differently because he is black. The Court says:

THE COURT: Mr. Tamarkin, it is relevant only in a comparative sense. Whether review board members take notes generally or not isn't important. Whether or not a specific employee is entitled to be present isn't important in this case.

What is important is if they treat him differently because he was black, and that's all I am really interested in.

MR. TAMARKIN: Your Honor, I beg to differ with you in a retaliation case.

THE COURT: Well, you may take your exceptions, and feel free to do so, but I am going to ask you to confine yourself to questions that relate to whether or not this man was treated differently because he was black.

The law is clear that harrassment, ridicule, or punishment to one who has opposed alleged discriminatory practices is evidence of retaliation; individuals need not

show that the actions of the union or Company are different because he is black. Hyland vs. Kenner Products Co., 13 F.E.P. Cases 1309, (S.D. Ohio, 1976); Pettway v. American Cast Iron Co., 411 F 2d 998, (C.A. 5, 1969).

b.) Rule 52

The failure of the District Court to make findings of fact and conclusion of law in accordance with Rule 52, Fed. Rul. Civ. Proc., 28 U.S.C.A., (App. 42) and the finding of the Sixth Circuit permitting the failure (App. 19) is in conflict with the following decisions. Denofre Transportation Insurance Rating Bureau, 532 F.2d 43 (C.A. 7, 1976), Russo v. Central School Dist. No. I, Towns of Rush, et al., Monroe County State of N.Y., 469 F.2d 623 (C.A. 2, 1972), certiorari denied, 93 S.Ct. 1899, 411 U.S. 932, 36 L.Ed. 2d 391, Kelly vs. Everglades Drainage Dist., 63 S.Ct. 1141, 1145, 319 U.S. 415 (1943).

CONCLUSION

Over 1,500 black employees worked at the General Electric Evendale plant between 1969 and 1977. A large percentage of these black employees were intentionally kept from obtaining high paying jobs both prior to and after 1969. When employees attempted to grieve this

denial, their plight was frustrated because of the conspiracy between the Company and the Unions denying black employees the right to arbitrate their grievance.

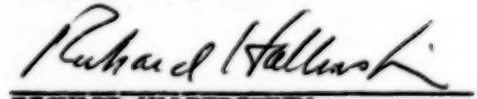
Between 1969 and 1978, 15 black employees were either transferred or hired into the IAM unit in contrast over 266 white employees were transferred or hired into the IAM unit. (App. 5) The Court of Appeals found on the facts that the IAM unit was higher paying and more stable. (App. 8)

The practices of the Unions and the Company in negotiating minimum criteria experience which is not job related and denying the transfer of seniority from one union to another cannot be permitted when the impact clearly demonstrates discrimination.

In the event this Court finds that the seniority system was not controlling (See Bryant vs. California Brewer's Association, 585 F. 2d 421 (CA9, 1978), because the upgrading of an individual did not depend on seniority unless all the persons who applied for the job had equal experience, then the Court's exclusion of pre 1969 evidence to show a pattern and practice which eventually led to a disparate impact is clearly erroneous.

This Court should remand the case to the District Court for a new trial.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was sent to William Engeman, Esq., Attorney for Defendant-Appellee, General Electric, 600 Dixie Terminal Building, Cincinnati, Ohio 45202; Bernard Fox, Esq., Attorney for Defendant-Appellee, I.A.M., Local 912, 601 Gwynne Building, 602 Main Street, Cincinnati, Ohio 45202; and Walter L. Sales, Esq., Attorney for Defendant-

Appellee, U.A.W. International & U.A.W., Local 647, 312 River City Mall, Louisville, Kentucky 40202, by ordinary U.S. mail, this 15 day of November, 1982.

Richard Halberstein

RICHARD HALBERSTEIN